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11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 THE CITY AND COUNTY OF SAN)
FRANCISCO, CALIFORNIA and THE)
14 PEOPLE OF THE STATE OF CALIFORNIA,)
Acting by and through San Francisco City)
15 Attorney DAVID CHIU,)

16 Plaintiffs,)

17 vs.)

18 PURDUE PHARMA L.P., et al.,)

19 Defendants.)
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Case No. 3:18-cv-07591-CRB

JOINT STATUS UPDATE

Judges: Hon. Charles R. Breyer and
Jacqueline Scott Corley

On November 18, 2021, the Court issued an Order Re Pharmacist Deposition Discovery Dispute and November 17, 2021 Discovery Hearing. ECF No. 781. The Court ordered, among other things, that:

By November 23, 2021, the parties shall file a joint submission that:

- Provides the dates for all uncompleted depositions. If the parties have not agreed to a date for a particular deposition, they must provide the date by which they will have agreed to a date.
- Provides the dates for any other forthcoming discovery.
- Summarizes any open discovery disputes and provides deadlines by which the disputes will be raised with the Court.

Id. at 2-3.

Pursuant to that Order, the parties provide the following deposition and discovery schedule as well as a summary of open disputes.

I. DEPOSITIONS TO BE COMPLETED

The following depositions are scheduled, planned, or noticed by Plaintiff The People of the State of California, acting by and through San Francisco City Attorney David Chiu (“Plaintiff”) of defendant group-related witnesses as noted:

Deponent	Primary Pertinent Defendant Group	Date Set	Notes
Shelly Fitch	Allergan ¹	12/9	
Adriana Knoblauch	Allergan	12/2	
Kimberly (Bloom) Poropat	Anda	12/1	
Norman Dodes	Anda	12/3	
James Gatto	Anda	12/8	
Endo 30(b)(6)	Endo		Scope and Date under negotiation (see below); The parties will resolve issues and agree to a date by 12/3

¹ As used herein, “Allergan” refers to Defendants Allergan Finance, LLC, Allergan Sales, LLC, and Allergan USA, Inc., and Specially Appearing Defendant Allergan plc. Defendant Allergan Finance, LLC was formerly known as Actavis, Inc., which was formerly known as Watson Pharmaceuticals, Inc. Defendant Allergan plc, which was formerly known as Actavis plc and is now known as Allergan Limited, does not waive but rather expressly preserves its objection to the Court’s personal jurisdiction over it.

Kayla Kelnhofer	Endo	11/29	
Annie Wang	Endo	12/3	
Monica Ferrone	Endo	Date not set	The parties will agree to a date by 12/3
Linda Kitlinski (cross-noticed by Endo in this case)	Endo	11/22-23	This deposition remains open. There will be a third day scheduled in December or early January by agreement of the parties due to the large number of cases in which the deposition was cross-noticed.
Teva 30(b)(6)		Date not set	Endo objected to this notice; the parties continue to meet and confer and are submitting a dispute paper (see below)
Jacqueline Morrison	Teva	12/16	
Jill Santens	Teva	12/15	
William Sweet	Teva	12/10	
Tim Fortescue	Teva	12/1	
Walgreens 30(b)(6)	Walgreens	Date not set	Scope and date under negotiation (see below). The parties will agree on both or submit any remaining disputes to the Court by November 23.
Robert Yagar	Walgreens	Date not set	Mr. Yagar returned from leave on November 22.
Joseph Ferry	Walgreens (former)	12/8-9	Deposition scheduled in conjunction with counsel for the States of New Mexico and Nevada
Rebecca Gayle	Walgreens	12/6	Ms. Gayle is a former Walgreens employee who is not represented by Walgreens' counsel.
Jeremy Gerspacher	Walgreens	12/7	Mr. Gerspacher is a former Walgreens employee who is not represented by Walgreens' counsel.
Golnaz Kamali	Walgreens	12/8	Ms. Golnaz is a former Walgreens employee who is not represented by Walgreens' counsel.
One additional pharmacist	Walgreens		

The following depositions are scheduled or planned by Plaintiff of Non-Party witnesses as noted:

Name	Date	Notes
Syneos Health, f/k/a Encuity Research LLC	12/3	
Stephen Seid	Date not set	Former employee of Purdue; Plaintiff and counsel for witness attempting to negotiate dates by 12/3/2021

Tony Scifo	Date not set	Former employee of Purdue; Plaintiff and counsel for witness attempting to negotiate dates by 12/3/2021
Gina Telford	Date not set	Former employee of Purdue; Plaintiff and counsel for witness attempting to negotiate dates by 12/3/2021
Thomas Mollick	Date not set	Former employee of Purdue; Plaintiff and counsel for witness attempting to negotiate dates by 12/3/2021

The following depositions are scheduled or planned of Plaintiff-related witnesses by the defendant groups as noted:

Name	Date	Notes
Jesus Mora	12/3	IT Manager at San Francisco Fire Department
Dr. Phillip Coffin	Date not set	Designated as non-retained expert; Deposition to be scheduled after rebuttal expert reports are served.
Dr. Claire Horton	Date not set	Sought by Walgreens. Subject to negotiations with UCSF. Plaintiff offered 12/10/2021.
Dr. Barry Zevin	Date not set	Returns from sabbatical in early December. Deposition to be scheduled by 12/10.
30(b)(6) - The People	Date not set	Sought by Endo. Subject to motion (see below).
30(b)(6) – Board of Supervisors	Date not set	Scope and Date under negotiation (see below); The parties will resolve issues and agree to a date and/or raise with the Court by 12/10.
30(b)(6) – Controller’s Office	Date not set	Scope and Date under negotiation (see below); The parties will resolve issues and agree to a date and/or raise with the Court by 12/10.
30(b)(6) – Mayor of San Francisco	Date not set	Scope and Date under negotiation (see below); The parties will resolve issues and agree to a date and/or raise with the Court by 12/10.
30(b)(6) – District Attorney	Date not set	Scope and Date under negotiation (see below); The parties will resolve issues and agree to a date and/or raise with the Court by 12/10.
30(b)(6) – Zuckerberg San Francisco General Hospital Pharmacy	12/10	Sought by Walgreens.

II. DISCOVERY MATERIALS TO BE PRODUCED

Pursuant to prior agreements or court orders, the parties will produce the documents and materials below by the date noted. To the extent any production leads to the need for further

proceedings or Court intervention, the parties will inform the Court as soon as possible. The parties have agreed to serve all interrogatory verifications by December 3, 2021.

A. Plaintiff Has Agreed to Produce the Following Materials to Defendants by the Following Dates:

Plaintiff's supplements to Non-Stayed Manufacturer Defendant Interrogatories: Plaintiff will supplement responses by November 24, 2021, with citations to the specific page numbers of the expert reports that Plaintiff contends provide responsive information.

By December 10, Plaintiff agreed to supplement its response to Walgreens' Interrogatory No. 4 (First Set). Walgreens had asked Plaintiff that, to the extent it plans to "identify, mention, discuss, or reference any other prescribers at trial in relation to their prescribing or any suspected wrongdoing related to prescription opioids, please supplements [its] response to include them." Plaintiff agreed to do so.

B. Defendants Have Agreed to Produce the Following Materials to Plaintiff by the Following Dates:

1. ALLERGAN

No promised or ordered materials at this time.

2. ANDA

No promised or ordered materials at this time.

3. ENDO and PAR

The Endo and Par defendants expect to produce additional documents in the MDL as reported in the parties' November 16, 2021 Joint Status Report. (ECF No. 773 at 18-19.) To the extent necessary, Endo and Par will supplement their privilege logs in this case by November 24, 2021. (*See* ECF No. 781). Additionally, Endo expects to produce a small supplement to the spreadsheets reflecting HCP payment data by December 3, 2021.

4. TEVA

No promised or ordered materials at this time.

5. WALGREENS

Plaintiff and Walgreens are discussing dates for Plaintiff's inspection of Walgreens' pharmacy software systems (as ordered in ECF No. 781).

1 Per the Order Following November 2, 2021 Status Conference, Plaintiff sent Walgreens a list
 2 of specific education and training materials for which Plaintiff seeks logs of attendance or
 3 completion on November 22. *See* ECF No. 725. Plaintiff awaits Walgreens' response.

4 **III. OPEN DISCOVERY DISPUTES AND DEADLINE FOR SEEKING**
 5 **COURT INTERVENTION**

6 **A. Plaintiff Has the Following Outstanding Potential Discovery Disputes**
 7 **with Defendants and, if Necessary, Will Raise Them with the Court by**
 8 **the Date Noted at the Latest:**

9 **1. ANDA**

10 Plaintiff has scheduled a meet and confer with defendant Anda on November 29 related to
 11 Anda's responses and objections to Plaintiff's Third Set of Interrogatories and Fourth Set of
 12 Requests for Production of Documents to Anda, Inc. (both served on November 12, 2021) and
 13 related issues. The parties will raise any issues with the Court by December 10. Additionally,
 14 Anda's responses to the Third Set of Interrogatories raise questions about the scope of Anda's earlier
 15 transactional data and documents concerning "direct" and "indirect" sales to San Francisco. Plaintiff
 16 has requested a meet and confer on this issue and, if not resolved will also raise it with the Court by
 17 December 10.

18 **2. ENDO**

19 Although the parties continue to meet and confer in an attempt to narrow or resolve disputes,
 20 Endo and Plaintiff plan to file a discovery dispute paper on November 24 seeking Court intervention
 21 on a number of issues including Endo's responses to interrogatories and production of marketing
 22 materials, and a Fed. R. Civ. P. 30(b)(6) notice Plaintiff served on Endo. Plaintiff may need further
 23 Court intervention on issues with regard to discovery materials that are just being produced, but will
 24 continue to meet and confer with the Endo defendants.

25 **3. TEVA**

26 On October 29, Plaintiff requested Rule 30(b)(6) deposition testimony designed to
 27 authenticate, lay foundation for, and question regarding, certain marketing/training videos shown to
 28 sales representatives and others, as well as direct-to-consumer marketing materials and budgets from
 the Teva/Actavis defendants. Plaintiff and Teva/Actavis defendants have met and conferred twice,

1 and Plaintiff narrowed its proposal and is willing to accept written responses for certain of the topics.
2 Teva/Actavis provided a follow-up letter on Thursday, November 18, 2021, and Plaintiff is
3 requesting a meet and confer for this week. If the issues are not resolved, the parties will raise the
4 issue with the Court by December 10, 2021.

5 **4. WALGREENS**

6 (a) **Follow up on APIS complaint files.** On November 18, Plaintiff requested the
7 underlying documents for 11 additional incidents in the APIS database (out of a total of 64 requested
8 to date, which Walgreens has otherwise produced). Plaintiff also committed to completing its
9 review, and making any resulting requests, by early December. Walgreens has thus far refused to
10 make any additional productions. The parties will continue to meet and confer and, if necessary,
11 simultaneously exchange and file 2-page dispute statements no later than November 30.

12 (b) **Employee Dispute Log re: Controlled Substance Dispensing.** As discussed at the
13 last hearing, Plaintiff requested that Walgreens produce a log of employee demand letters, civil
14 complaints, and settlements related to its dispensing policy—all of which would be responsive to
15 Plaintiff’s Request for Production No. 8 (seeking, *inter alia*, “all documents and discovery . . . and
16 any accompanying documents, from any litigation, mediation, . . . or arbitration regarding . . .
17 dispensing . . . of Opioids or Cocktail drugs.”). Walgreens told Plaintiff it would not produce the
18 log. Plaintiff proposes that the parties simultaneously exchange and file 1-page dispute statements
19 no later than November 30.

20 (c) **Written discovery responses.** On November 12, Walgreens served responses and
21 objections to interrogatories, requests for productions, and requests for admission that Plaintiff
22 believes are deficient. The parties met and conferred on November 23 and agreed to continue the
23 discussions. To the extent any disputes remain, Plaintiff proposes that the parties simultaneously
24 exchange and file 2-page dispute statements no later than December 3.

25 (d) **Rule 30(b)(6) deposition.** Per Court order, and subsequent stipulation, by November
26 23, the parties will submit remaining disputes, if any, regarding the scope of Plaintiff’s Rule 30(b)(6)
27 deposition of Walgreens.

1 **5. ONGOING DISCUSSIONS REGARDING DOCUMENT**
2 **AUTHENTICITY AND ADMISSIBILITY**

3 In October, Plaintiff proposed two stipulations to defendants regarding (1) the authenticity
4 and admissibility of documents produced in this and related matters, and (2) the foundation for
5 marketing materials produced by defendants. Defendants responded with written queries about the
6 issues, to which Plaintiff has not yet provided answers. The parties intend to continue to meet and
7 confer on these issues.

8 **B. Defendants Have the Following Outstanding Discovery Disputes with**
9 **Plaintiff and, if Necessary, Will Raise Them with the Court by the**
10 **Date Noted at the Latest:**

11 **1. MANUFACTURING DEFENDANTS**

12 (a) **Deficient responses to second and third sets of interrogatories.** The parties have
13 met and conferred multiple times regarding Plaintiff's responses to Manufacturer Defendants'
14 second and third sets of interrogatories. Plaintiff served supplemental responses on November 11,
15 2021. Manufacturer Defendants continue to believe that Plaintiff's supplemental responses to
16 Interrogatory Nos. 26, 27, 31, 33, 35, 37, and 41 are deficient. Plaintiff stated above that it intends to
17 follow the Court's order on this topic and provide further supplemental responses with citations to
18 the specific page numbers of the expert reports that Plaintiff contends provide information
19 responsive to these interrogatory requests by November 24, 2021. Manufacturer Defendants assert
20 that such further supplementation will not address any of the other deficiencies that Manufacturer
21 Defendants allege exist in the Plaintiff's responses to these interrogatories. As the parties have met
22 and conferred multiple times on these remaining issues, Manufacturer Defendants propose that the
23 parties simultaneously exchange and file two page dispute statements no later than December 3,
24 2021.

25 (b) **Deficient responses to fourth set of interrogatories.** On November 12, Plaintiff
26 served responses and objections to Manufacturer Defendants' fourth set of interrogatories. The next
27 business day, Manufacturer Defendants sent a letter identifying what they believe to be multiple
28 deficiencies in those responses and requesting to meet and confer. The parties have not met and
 conferred on these issues, but Plaintiff stated above that it intends to follow the Court's order on this

topic and provide supplemental responses with citations to the specific page numbers of the expert reports that Plaintiff contends provide information responsive to these interrogatory requests by November 24, 2021. If disputes remain, Manufacturer Defendants will raise them promptly with Plaintiff, will seek to meet and confer during the week of November 29, and will seek an accelerated briefing schedule on any unresolved issues.

2. ALLERGAN

Allergan sent notices for deposition and documents pursuant to Fed. R. Civ. P. 30(b)(6) to four San Francisco-related entities: The Office of the Mayor, The Board of Supervisors, the Controller and the San Francisco District Attorney. The parties are negotiating the scope of any appropriate testimonial and written responses. To the extent the parties cannot resolve any issues, they will raise them with the Court by December 10.

On October 29, Allergan made three requests for production of materials identified during the deposition of Mark Corso, Chief Financial Officer, San Francisco Fire Department. On November 10, Plaintiff made a supplemental production responsive to request nos. 1 and 2. Information concerning request no. 3 remains outstanding.² The parties will work to resolve the production of these materials. To the extent the parties cannot resolve any issues, they will raise them with the Court by December 10.

3. ANDA

On November 18, Anda inquired whether, consistent with this Court's guidance at the November 17 discovery conference, Plaintiff intends to supplement a number of its responses to Distributor Defendants' interrogatories in this matter where Plaintiff either deferred the response to its expert reports or said it would answer at the end of fact discovery. Plaintiff has not yet responded. Anda assumes Plaintiff will agree to supplement, but if not, will meet-and-confer and raise any issues with this Court by December 15.

² "Any and all final allocations for any community paramedicine programs including, without limitation, the final allocation made around May or June 2021." *See, e.g.*, M. Corso Dep. 253:14-255:23. Oct. 27, 2021.

1 **4. ENDO**

2 (a) The Endo defendants served a notice for deposition and documents pursuant to Fed.
3 R. Civ. P. 30(b)(6) on Plaintiff, the People of the State of California. The parties have reached an
4 impasse on numerous issues, are preparing a discovery dispute submission and Endo expects to seek
5 Court intervention this week.

6 (b) As described in several Joint Status Reports submitted over the past few months, the
7 Endo defendants have raised various issues about the temporal scope of materials the City and
8 County of San Francisco departments have produced. The parties continue to meet and confer on
9 these issues. If the issues are not resolved by the parties will raise them with the Court by December
10 10.

11 **5. TEVA**

12 No issues at this time.

13 **6. WALGREENS**

14 (a) **Zuckerberg San Francisco General Hospital Pharmacy.** The parties are
15 discussing the scope and timing of the 30(b)(6) deposition of Zuckerberg San Francisco General
16 Hospital Pharmacy (Plaintiff offered December 10, which Walgreens is considering). Walgreens
17 proposes that, if there are any disputes, the parties simultaneously exchange and file 2-page dispute
18 statements no later than December 3.

19 (b) **Doctor Re-Identification in CURES.** Walgreens served notices on a few dozen
20 prescribers, including some Plaintiff-employed prescribers, informing these prescribers that
21 Walgreens intends to re-identify them by name in the CURES data. Walgreens asked that the
22 prescribers provide any objections by November 22. Walgreens anticipates that DOJ will object to
23 their re-identification, and given that DOJ is not a party to this stipulation, Walgreen plans to ask
24 DOJ to consent to this Court's dispute resolution protocol and then to serve a dispute letter on DOJ
25 by December 1.

26 (c) **Plaintiff's Response to Walgreens' Interrogatory No. 2 (First Set).** In March,
27 Walgreens filed a dispute letter seeking a response to Walgreens' Interrogatory No. 2 (First Set). On
28 November 18, Walgreens asked Plaintiff if it would agree to a stipulation regarding proof about

harm resulting from specific orders. Plaintiff has not yet responded. If the parties cannot agree, Walgreens proposes that the parties simultaneously exchange and file 2-page dispute statements no later than December 10.

(d) **Walgreens' Challenges to Plaintiff's Improper Privilege Claims.** The parties have submitted briefing on Walgreens' privilege challenges. Walgreens anticipates teeing up additional privilege challenges, in accordance with the guidance this Court provided in Dkt. 786, and will meet and confer with Plaintiff on how to submit any such challenges. Out of an abundance of caution, and only to the extent the parties cannot reach agreement on how to submit remaining challenges, Walgreens proposes that the parties exchange two-page dispute statements no later than December 10.

IV. CONCLUSION

Per the Court's November 18, 2021 Order (ECF No. 781), the next discovery conference is set for December 7, 2021 at 10:00 a.m.

DATED: November 23, 2021

Respectfully submitted,

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26
27 Actavis plc and is now known as Allergan Limited, does not waive but rather expressly preserves its
28 objection to the Court's personal jurisdiction over it.

ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from the above signatories.

Dated: November 23, 2021

By: *Aelish M. Baig*

CERTIFICATE OF SERVICE

I hereby certify that, on November 23, 2021, service of this document was accomplished pursuant to the Court's electronic filing procedures by filing this document through the ECF system.

s/ Aelish M. Baig
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